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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,650	10/17/2003	Peter Nollert	018062-003130US	1247

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EXAMINER

GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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11/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,650

Applicant(s)

NOLLERT ET AL.

Examiner

Brian R. Gordon

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9-20-07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 50-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed September 20, 2007 have been fully considered but they are not persuasive. Applicant asserts, Liston does not disclose decoupling said second syringe from said first syringe so as to permit manipulation of said second syringe. Applicant asserts valve 300 prevents such decoupling. The examiner respectfully disagrees. The valve 300 functions as a coupling/decoupling device. In one position, the valve couples the syringes together. As seen in Figure 10, the valve may also be placed in a decoupling position in which the syringes are not coupled together.

As such, the previous rejection is hereby maintained.

Claim Rejections - 35 USC § 112

2. Claims 50-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the syringes can be "decoupled" when there is no prior recitation of a step or requirement of the syringes being coupled together. At what point in the process are the syringes coupled together?

It should be noted that while the claim recites the intended purpose of the decoupling is to permit further manipulation of the second syringe. The phrase is not considered as positive recitation of any further manipulation other than that of the last step. Manipulation can be anything. If applicant intends for some other step to be

performed between the decoupling and utilizing steps, the claim should be amended to positive specify such action.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liston US 3,817,425 in view Hamblin et al US 6,607,522.

Liston disclose a specimen dispenser adapted for dispensing and mixing a liquids in which first and second syringes are used to dispense a sample liquid and a reagent liquid. The inlet orifice of the second syringe is connected to a second end opening of the first syringe. The second syringe 280 is smaller than first syringe 290.

Liston does not specify mixing a lipid protein mixture.

Hamblin et al. disclose it is contemplated that such a device may comprise a syringe in which the lipid, proteinaceous material, active agent and/or photosensitizer solutions are separated by a plate that contains serrations which will penetrate the photosensitizer containing compartment and then allow mixing of the contents of that compartment with the contents of the protein containing compartment. In that the operation of the kits will generally rely on photo-oxidative mechanisms and singlet oxygen generation, one may wish to store the photosensitizer, the lipid, protein, polypeptide, peptide and/or active agent containing compositions in a high oxygen atmosphere or in an atmosphere which has a higher oxygen concentration or tension than usual (column 22, lines 25+).

Example 5, at column 32 describes a method in which a protein mixture is employed and activated with a stimulator to produce crystalline growths within an 8-well slide.

It would have been obvious to one of ordinary skill in the art to recognize the device of Liston may be employed to mix and dispense a number of materials including lipid proteins as illustrated by Hamblin.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian R Gordon
Primary Examiner
Art Unit 1797

brg

